

"(1) Property was acquired without actual or constructive notice of the adjudication proceedings and a use of surface water of the San Gregorio Creek Stream System is being made which is not authorized in the order; or,

"(2) The claimant or successor in interest has changed the purpose of use or place of use of water from the allocation specified in the order of determination."

All other petitions must be justified on a case by case basis consistent with Title 23, California Code of Regulations Section 768 which provides that reconsideration of a Board order may be requested for any of the following causes:

"(a) Irregularity in the proceedings, or any ruling, or abuse of discretion, by which the person was prevented from having a fair hearing;

"(b) The decision or order is not supported by substantial evidence;

"(c) There is relevant evidence which, in the exercise of reasonable diligence, could not have been produced;

"(d) Error in law."

3.0

SUMMARY OF PETITION

On May 9, 1989, Alan G. Lambert filed a petition for reconsideration of Order WR 89-7. The petition requests an allocation of water from a horizontal well that is asserted to have continuous flow into a tributary of San Gregorio Creek. The Order of

Determination does not allocate any water to the petitioner from this or any other source.

4.0

BACKGROUND

On July 16, 1980, petitioner filed a Notice of Intention to File a Proof of Claim of Water Right. The properties of parties who submitted an intention to file proof of claim were visited by a representative of the Board and a detailed field investigation was conducted pursuant to Water Code Section 2551.

All property owners within the San Gregorio Creek Stream System watershed were sent a certified letter dated August 8, 1980 which clarified that the "'stream system' includes all streams and springs whose waters contribute to San Gregorio Creek by way of the natural channels of La Honda Creek, Alpine Creek, Mindego Creek and several other streams." The certified mail return card shows that petitioner received this letter before the field investigation of his property occurred. The water flowing from the horizontal well from which petitioner now requests an allocation is included in the adjudicated "stream system" if the source contributes to the flow of San Gregorio Creek.

Board staff conducted a field investigation of petitioner's property on September 18, 1980.

Petitioner was present during the investigation.

Although petitioner was notified by certified letter of February 4, 1981 to file a proof of claim, no proof of claim was filed.

Water Code Section 2577 states:

"Any person not submitting a proof of claim to the board or to representatives of the board shall be notified in writing that such person's rights will be entered in the preliminary order of determination by the board based on the measurements and information gathered during the investigation unless a claim is submitted within 30 days of such notification."

Since petitioner did not file a proof of claim, his description of use of water and findings of the Board regarding his water rights were based on information determined during the field investigation. That information is summarized in Part II of the Report on San Gregorio Creek Adjudication as follows:

"Description of Use. Alan Lambert and M. Huynen own a 49.5 acre parcel containing two homesites. Water is pumped from groundwater wells for domestic use. The parcel is riparian to a spring and a gully that serves as a drainage for runoff of local water.

"Findings of the Board. See Paragraphs 26 and 27, Section III, regarding future use of water under unexercised riparian rights." (Report, p. II-77)¹

No water was allocated to petitioner in the preliminary order of determination (Report, pp. III-20 and 21)

¹ Paragraphs 26 and 27, Section III, provide mechanisms for activating dormant riparian rights.

because his use of water was identified as being from groundwater wells. At the time of the field investigation petitioner was not making any use of the spring and consequently he was found to have an unexercised riparian right to the water flowing from the spring.

Petitioner was mailed a copy of the Report and was notified by letter dated November 19, 1984 that objections to the Report must be submitted in writing to the Board by February 1, 1985. Petitioner did not file an objection.

5.0

TIMELINESS OF ISSUE RAISED BY PETITION

Petitioner's request is best characterized as an objection to the Report on San Gregorio Creek Adjudication or as an attempt to initiate a new claim. Neither is timely.

The Water Code provides a comprehensive process for investigating the diversion and use of water within the stream system and for filing proofs of claim (Water Code Sections 2550-2577). The time for filing proofs of claim expired April 7, 1981. Section 2577 requires the Board to determine and include in its order the rights of all persons who fail to file proofs of claim,

such determination to be based on evidence in the record. The Board made such a determination in petitioner's case because he failed to file a proof of claim.

The Water Code also provides a comprehensive process for the filing and hearing of objections to the Report (Water Code Sections 2604-2653). The time for filing objections to the Report expired February 1, 1985. Petitioner did not file an objection nor did he appear and offer evidence at the hearing on objections. Consequently, no changes were made in the Order of Determination with respect to the petitioner's use of water (Order, pp. 104-105). Petitioner's attempt to initiate a new claim or to raise an objection as an issue for the first time during the reconsideration process is untimely.

6.0

CONCLUSION

Petitioner does not allege any basis for reconsideration recognized under our regulations (23 CCR 768) or allowed by Resolution No. 89-29. Further, petitioner, having received notices, failed to file a proof of claim and failed to object to the Report on San Gregorio Creek Adjudication. Petitioner is raising an issue for the first time on reconsideration that

objection. To allow petitioner to raise an untimely objection or to initiate a new claim on reconsideration would be inappropriate and inconsistent with the statutory adjudication process. Therefore, the petition for reconsideration should be denied.

ORDER

NOW, THEREFORE, IT IS ORDERED THAT the petition for reconsideration of Alan G. Lambert is denied.

CERTIFICATION

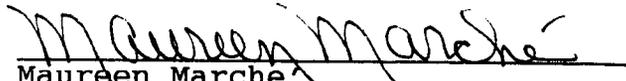
The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on June 22, 1989.

AYE: W. Don Maughan
Darlene E. Ruiz
Edwin H. Finster

NO: None

ABSENT: Eliseo M. Samaniego
Danny Walsh

ABSTAIN: None


Maureen Marche
Administrative Assistant to
the Board

